

ORIGINAL

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FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

MAR 11 2019
at 9 o'clock and 21 min A M
SUE BEITIA, CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

YA-WEN HSIAO,

Plaintiff,

vs.

ALEXANDER ACOSTA, in his
capacity as the United States Secretary
of Labor,

Defendant.

CIVIL NO. 18-CV-00502-JAO-KJM

PLAINTIFF'S RESPONSE TO
DEFENDANT'S NOTICE OF
ERRATA (ECF 17)

MOTION FOR LEAVE TO FILE A
SURREPLY

Hearing Date: June 7, 2019

Hearing Time: 11:00 AM

Place: Aha Kanawai

Before: Honorable Judge Jill A. Otake

PLAINTIFF'S RESPONSE TO DEFENDANT'S NOTICE OF ERRATA

On March 4, 2019, Defendant filed a Motion to Dismiss for Lack of Jurisdiction (ECF 13); the Plaintiff responded on March 6, 2019 filing an opposition to Defendant's motion to dismiss (ECF 14). On the same date, the Plaintiff also filed a request for an expedited hearing due to what she felt was the severity of the accusations (ECF 15). This court denied that Emergency Request (ECF 16). On the same date, the Defendant filed a "Notice of Errata" correcting the allegations on the Motion to Dismiss (ECF 17).

The Plaintiff would like to thank the Defendant for correcting the record and the sincere apology it has expressed. The Plaintiff's immediate concerns that were raised in ECF 15 has been resolved and conveys her apologies to the court for the time and resources that were used to address this in the order.

MOTION FOR LEAVE TO FILE A SURREPLY

The Defendant's Notice of Errata (ECF 17) changes the substantive content and the context of the arguments it made in Section E of their Motion to Dismiss.

A surreply is not provided for by the FRCP nor the Local Rules but a party may ask leave from the court for permission with good cause.

*"A district court may allow a surreply to be filed, but only "where a valid reason for such additional briefing exists, such as where the movant raises new arguments in its reply brief." Hill v. England, 2005 WL 3031136, *1 (E.D.Cal. Nov. 8, 2005)" Thomas v. Wilkinson (E.D. Cal., 2017)*

The Defendant's corrections create a new argument with regards to Section E of their Motion to Dismiss (ECF 13-1 Page ID 421-423).

The Defendant is expected to file a reply to the Plaintiff's opposition. The Plaintiff therefore requests leave from this court to file a surreply within 7 days of the Defendant's service of his reply.

In the alternative, if the Defendant does not submit a timely reply, the Plaintiff requests a fair opportunity to respond this new argument that arises from the corrections to the Motion to Dismiss.

Respectfully Submitted on March 11, 2019

A handwritten signature in black ink, appearing to read 'Ya-Wen Hsiao', with a long, sweeping flourish extending upwards and to the right.

Ya-Wen Hsiao

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date stated below, a true and correct copy of the foregoing document was duly served upon the following by USPS Priority Mail.

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Ya-Wen Hsiao

Dated: March 11, 2019 in Honolulu HI